

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 219

June 30, 1958

## PROPOSED ASSESSMENT: OMISSION EXCEEDING 25% OF GROSS INCOME

### Syllabus:

Under the particular facts herein taxpayer made a full disclosure of gross income. Consequently a proposed assessment was untimely.

On March 25, 1952, taxpayer's wife filed her 1951 return. At Item 14 she identified her income as 1/2 from husband's return. Schedules attached to the return are copies of schedules which are attached to the husband's return on which the entire community income was reported. The husband's 1951 return was filed May 4, 1953. He reported at Item 12 the entire adjusted gross income. At Item 14 he reported "less 1/2 to wife." Schedules attached to return are originals of copies which are attached to the wife's return. Final audit adjustments are prepared to transfer alleged separate income of husband from the wife's return, thus necessitating a deficiency against the husband.

A proposed deficiency against the husband under the facts outlined herein is not timely under Section 18586 of the Personal Income Tax Law and may be upheld only if the facts justify application of Section 18586.1.

Advice is requested as to whether an omission of gross income was made so as to justify the application of Section 18586.1 of the Personal Income Tax Law.

The 1951 return of the husband made a full disclosure of the community gross income under the general heading of "Income" and attached to said return were appropriate schedules setting forth the necessary computations of the gross income items reported.

The word "omit" means to disregard, to fail, forbear, neglect to mention, or to fail to insert or include, and, in fact, includes the failure to do all things that could be done under the circumstances.

Gross income as used in said section refers to the statutory gross income defined by Section 17071 of the Personal Income Tax Law and not to adjusted gross income defined by Section 17072.

In the light of the preceding discussion and from an examination of the taxpayer's return it is clear that even though the taxpayer allocated to his wife 50% of the total community income, there was no omission of gross income under the statute since the full amount of his gross income appeared on the return and its computation on schedules attached. The proposed deficiency assessment is barred by the statute of limitations since Section 18586.1 is not applicable.